

REMARKS

With this Response, claims 5, 10, 14, 16, and 19 are amended. Applicants respectfully request that claims 22-24 be canceled without prejudice. Therefore, claims 5-8, 10-14, and 16-21 are pending.

Claim Rejections - 35 U.S.C. § 103

Claims 5-8, 10-14, and 16-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,324,165 B1 issued to Fan et al. (*Fan*) in view of U.S. Patent No. 5,497,375 issued to Hluchyj et al. (*Hluchyj*). Claims 22-24 have been canceled; therefore, rejection of these claims is moot. Applicants respectfully submit that the remaining claims are not rendered unpatentable over the cited references for at least the following reasons.

Claim 5 recites the following:

maintaining a plurality of service level agreements (SLAs) at a first switching point, each SLA having a corresponding minimum data rate;
transmitting data packets **received at the first switching point** corresponding to each SLA at or above the minimum data rate in accordance with the respective SLA;
receiving a message from a second switching point at the first switching point to indicate that traffic between a source and a destination is congested; and
adjusting a data rate at which packets corresponding to an SLA, destined for the destination, are output from the first switching point in response to receiving the message to reduce the congestion.

Claims 10, 14, 16, and 19 recite similar limitations directed to a congestion message sent between **switching points** to indicate that traffic is congested.

The Office Action at page 3 states that *Fan* fails to disclose receiving a message from a second switching point at a first switching point to indicate congestion. The Office Action cites *Hluchyj* as disclosing the limitation. Specifically the Office Action cites Figure 2 of *Hluchyj* as disclosing feedback to indicate traffic between a source and destination is congested. Applicants

traverse this assertion. Applicants respectfully submit that the *Hluchyj* reference fails to provide support that its source 102 could be interpreted as a switching point, and thus could not be a switching point to receive a message to indicate congestion. Figure 1 includes "edge node 104," which is specifically labeled as being associated with the source. Showing an edge node associated with source 102 infers that source 102 is outside of the network over which its packets will be switched. Because source 102 is outside the network, Applicants submit it cannot be a switching point for packets, which receives and forwards packets over the network. Thus, Applicants submit that Figure 1 of *Hluchyj* shows that all feedback paths considered in the reference are to the **source**, and fails to disclose or suggest a congestion message from a first **switching point** to a **second switching point** to indicate that traffic is congested between the source and the destination. Therefore, the cited references, whether alone or in combination, fail to disclose or suggest at least this limitation of independent claims 5, 10, 14, 16, and 19, and so fail under MPEP § 2143 to establish a prima facie case of obviousness.

MPEP § 2143.03 states that if an independent claims is nonobvious, any claim depending from the independent claim is also nonobvious. Because claims 6-8, 11-13, 17-18, and 20-21 depend from claims 5, 10, 16, and 19, respectively, Applicants respectfully submit that these claims are also nonobvious.


Conclusion

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, all pending claims are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number
02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: 6/7/04



Gregory D. Caldwell
Reg. No. 39,926

12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025-1026
Telephone: (503) 684-6200

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